

**CITY OF MORGAN HILL
JOINT REGULAR CITY COUNCIL AND
REGULAR REDEVELOPMENT AGENCY MEETING
MINUTES – MARCH 16, 2011**

CALL TO ORDER

Mayor Pro-Tem/Vice Chair Carr called the Joint Regular City council and Redevelopment Agency meeting to order at 7:03 p.m.

ROLL CALL ATTENDANCE

Present: Council Members: Carr, Constantine, Librers, Siebert
Absent: Council Members: Tate

DECLARATION OF POSTING OF AGENDA

Minutes Clerk Wilson certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

SILENT INVOCATION

Prior to the Invocation, Mayor Pro-Tem Carr announced that the meeting would be adjourned in honor of David Vogel, a Gilroy City employee who was killed the past week while working. Mayor Pro-tem Carr also asked that we keep the victims of the recent Tsunami in Japan in our memory, especially our sister city of Mizuho.

PLEDGE OF ALLEGIANCE

Led by Mayor Pro-Tem Carr.

PRESENTATIONS

None

PROCLAMATIONS / RECOGNITIONS / INTRODUCTIONS

None

CITY COUNCIL REPORTS

Council Member Librers reported on the City Council's January goal setting retreat and the particular goal of expanding opportunities in the community to embrace diversity. Councilmember Librers also announced a future event promoting cultural diversity planned by the Sister Cities Committee and the Library, Culture and Arts Commission that will be scheduled for September 4th at the Amphitheater.

CITY MANAGER'S REPORT

City Manager Tewes reported on the activities at the State Capitol and how those actions might affect items on the agenda. He further commented on the Governor's proposal to eliminate the Morgan Hill Redevelopment Agency and the loss of \$87 million in assets collected from Morgan Hill taxpayers.

He stated that the City's representative in the State Assembly, Bill Monning, voted in favor of the bill. City Manager Tewes stated that even though the bill to eliminate redevelopment agencies did not receive the 2/3 votes needed to pass, it is anticipated that it will pass sometime in the near future. He recommended that agenda item #15, a proposal for the RDA to purchase equipment for the CRC, be removed from the agenda and brought back to the Council once the affect of the current trailer bill is determined. City Manager Tewes commented on the supplemental materials provided for items 16 and 20. He identified the supplemental for item 16 as correspondence from the owners of the Granary. He identified the supplemental for item 20 as a report regarding the Draft Habitat Conservation Plan that outlines additional information Councilmembers have inquired about.

CITY ATTORNEY'S REPORT

None

OTHER REPORTS

None

PUBLIC COMMENT

Mayor Pro-Tem Carr opened the public comment period at 7:09 p.m. for members of the public to comment on items that were not on the agenda. No public comment was received and Mayor Pro-Tem Carr closed the public comment period at 7:10 p.m.

City Council and Redevelopment Agency Action

ADOPTION OF AGENDA

Action: *On a motion by Council/Agency Member Siebert and seconded by Council/Agency Member Constantine **Approved** the agenda as posted. The motion passed by the following vote: Ayes: 4, Noes: 0, Absent: 1 (Tate).*

City Council Action

CONSENT CALENDAR:

ITEMS 1-11

Action: *On a motion by Council/Agency Member Constantine and seconded by Council/Agency Member Siebert **Approved** the Consent Calendar Items 1 thru 6 & 8 thru 14. Item 15 was pulled from the agenda. Councilmember Constantine pulled agenda item 7 for discussion. The motion passed by the following vote: Ayes: 4, Noes: 0, Absent: 1 (Tate).*

1. **APPROVAL OF AGREEMENT WITH SAN JOSE STATE UNIVERSITY RESEARCH FOUNDATION FOR LLAGAS CREEK RESTORATION PROJECT**
Recommended Action(s): Authorized the City Manager to execute the agreement.

2. **APPROVAL OF AGREEMENT WITH EMC PLANNING GROUP, INC TO COMPLETE ENVIRONMENTAL ASSESSMENT FOR EA-09-05 MONTEREY – MONTEREY DYNASTY**
Recommended Action(s): Authorized the City Manager to execute a consultant agreement with EMC Planning Group, Inc.
3. **ANNEXATION APPLICATION: ANX-09-01: SHADY LANE-HANSON (APN 729-29-017)**
Recommended Action(s): Adopted Resolution 6406.
4. **LETTER TO SEC OPPOSING FEDERAL REGISTRATION OF APPOINTED BOARD MEMBERS**
Recommended Action(s): Approved letter to Securities and Exchange Commission.
5. **APPROVAL FOR LONEHILL SUBDIVISION IMPROVEMENT AGREEMENT**
Recommended Action(s):
 1. **Approved** the attached Subdivision Improvement Agreement; and
 2. **Authorized** the City Manager to execute the Subdivision Improvement Agreement on behalf of the City; and
 3. **Authorized** the recordation of the Subdivision Improvement Agreement.
6. **AWARD COCHRANE ROAD WIDENING PROJECT**
Recommended Action(s):
 1. **Approved** project plans and specifications; and
 2. **Appropriated** \$130,000 from the Traffic Impact Fund (309) for CIP administration and construction services; and
 3. **Awarded** contract to Golden Bay Construction, Inc. For the Cochrane Road Widening project in the amount of \$464,395; and
 4. **Authorized** expenditure of construction contingency funds of \$46,439.
7. **ADDITIONAL APPROPRIATION FOR CITY OF MORGAN HILL LANDSCAPE ASSESSMENT DISTRICT NUMBER 1**
Recommended Action(s): Appropriated an additional \$26,444 from Fund 229 for District Maintenance and Improvement Expenses.

Item 7 was Pulled from Consent Agenda for Discussion

8. **AMENDMENT TO THE IMPLEMENTATION AND OPTION AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY AND CITY FOR ACQUISITION OF THE WILLOWS APARTMENT FEE INTEREST**
Recommended Action(s): Adopted Resolution 6407 authorizing the City Manager to execute the amendment to the Implementation and Option Agreement with the Agency including the ability to exercise the option if the Redevelopment Agency is slated to be abolished by the State.
9. **MANAGEMENT PROFESSIONAL AND CONFIDENTIAL EMPLOYEES RESOLUTION**
Recommended Action(s):
 1. **Approved** Human Resources Manager Job Classification; and
 2. **Approved** updated Resolution 6408 amending Resolution 6381, "Selected Salary Ranges and Job Titles for Management Professional and Confidential Employees", to reflect the Human Resources Manager Job Classification.

10. **FEBRUARY 2011 FINANCIAL & INVESTMENT REPORTS**
Recommended Action(s): Accepted and filed report.
11. **STATUS OF CDBG URBAN COUNTY JOINT POWERS AUTHORITY**
Recommended Action(s): Accepted report.

Redevelopment Agency Action

CONSENT CALENDAR:

ITEMS 12-14

12. **CALIFORNIA REDEVELOPMENT LEGAL DEFENSE FUND**
Recommended Action(s): Authorized the expenditure of \$5,000 from the Redevelopment Fund (317) as the City of Morgan Hill's contribution to the California Legal Defense Fund.
13. **FEBRUARY 2011 FINANCIAL & INVESTMENT REPORTS**
Recommended Action(s): Accepted and filed report.
14. **AMENDMENT TO THE IMPLEMENTATION AND OPTION AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY AND CITY FOR ACQUISITION OF THE WILLOWS APARTMENTS FEE INTEREST**
Recommended Action(s): Adopted Resolution MHRA-339 authorizing the Executive Director to do everything necessary to prepare and execute an amendment to the Implementation and Option Agreement whereby the Agency grants the City an option to acquire the Agency's interest in the Willows Apartments located at 50 West Edmundson Avenue.

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

ITEM 15

15. **CENTENNIAL RECREATION CENTER EQUIPMENT PURCHASES**
Recommended Action(s):
 1. **Appropriated** \$100,000 from the Redevelopment Agency Fund 317 to Fund 741 for the purchase of Centennial Recreation Center (CRC) fitness center equipment and other related items; and
 2. **Found** that a competitive bid would not be likely to result in a lower price pursuant to Morgan Hill Municipal Code Section 3.04.150(B) for equipment purchased under YMCA pricing

Item 15 removed from agenda

City Council Consent Calendar Item 7 Pulled for discussion.

7. **ADDITIONAL APPROPRIATION FOR CITY OF MORGAN HILL LANDSCAPE ASSESSMENT DISTRICT NUMBER 1**
Recommended Action(s): Appropriate an additional \$26,444 from Fund 229 for District Maintenance and Improvement Expenses.

Item 7 was removed from the consent calendar by Councilmember Constantine. Councilmember Constantine asked for clarification in regards to holding the previous contractor liable for the condition of the irrigation system repair. Environmental Programs Administrator Eulo commented on the contentious nature of the relationship with the previous contractor and that the relationship has been much more amicable with the new contractor and on the increased confidence from staff on repairs made to the irrigation system.

***Action:** On a motion by Councilmember Constantine and seconded by Councilmember Librers Appropriated an additional \$26,444 from Fund 229 for District Maintenance and Improvement Expenses The motion passed by the following vote. Ayes: 4; Noes: 0; Absent: 1 (Tate).*

Redevelopment Agency Action

OTHER BUSINESS:

ITEM 16

16. LOAN MODIFICATION FOR OFF-SITE IMPROVEMENTS FOR DAY WORKER CENTER

Recommended Action(s): Adopting Resolution MHRA-339 authorizing the Executive Director to prepare/amend and execute all the necessary and appropriate legal documents, subject to Agency Council review, needed to forgive 50% of the \$205,000 loan plus accrued interest given to Charles Weston and Lesley Miles to construct the offsite improvements for the Day Worker Center Project and extend the loan terms, as recommended below, for the remaining principal and interest..

Report by Business Assistance and Housing Services Director Toy.

Councilmember Librers asked for clarification regarding forgiveness of the balance of the loan if a building permit is pulled. Business Assistance and Housing Services Director Toy stated that the forgiveness of the loan acts as an incentive for the site to be developed sooner, as well as, serves as help with the financing of the site.

Councilmember Librers questioned whether the applicants are the owners of the site. Business Assistance and Housing Services Director Toy confirmed that they were and that the City only has a lien on the property.

Councilmember Librers asked if the City had the only lien against the property. Business Assistance and Housing Services Director Toy stated that there is a bank loan on the property.

Mayor Pro-Tem Carr questioned why August 2010 is the starting date. Business Assistance and Housing Services Director Toy stated that due to the current economic conditions it seemed a reasonable period, which is also the last year of the initial 7-year loan period.

Mayor Pro-Tem Carr questioned whether the loan would then be made current through this action. Building Assistance and Housing Services Director Toy confirmed that the loan would through this action be made current.

Mayor Pro-Tem Carr opened the item to public comment at 7:18 p.m.

Frank Manocchio spoke regarding his concerns of how the Morgan Hill Redevelopment Agency has handled similar situations and other loans that were forgiven or modified, and his concern regarding what is going to happen to the Redevelopment Agency and the General Fund. Mr. Manocchio also expressed his concerns regarding improvements that were made to the property and subsequently removed, which seemed to be a wasteful action.

Mayor Pro-Tem Carr closed the public comment period at 7:21 p.m.

City Manager Tewes reiterated that at the time the initial Day Worker Center was proposed certain improvements were required; subsequently the City was successful in receiving a grant that allowed complete reconstruction of Depot Street and certain previous improvements were removed due to the grant allowing the ability to complete the entire project.

Councilmember Librers stated that she is uncomfortable forgiving the outstanding principle. She also stated that the city is not in a position to forgive loans and asked clarification from her colleagues as to why this action would be beneficial to encourage pulling permits.

Councilmember Siebert stated that this is an example of the purpose of a redevelopment agency. He also shared his recollection regarding the condition of the property prior to this project and the improvements that have been made, which eliminated blight and the current action that provides a small economic incentive to further decrease blight by development of other areas. Councilmember Siebert asked City Manager Tewes whether there is urgency on this item due to pending state action.

City Manager Tewes commented on the effect of anticipated State actions and the inability to decide action on this item if intended state actions come to pass.

Councilmember Siebert questioned whether this item has been brought before Council as a direct result of the pending state action. City Manager Tewes confirmed that although this loan was part of staff discussions for several months, the anticipated state actions to eliminate redevelopment agencies directly resulted in this action being brought before Council.

Mayor Pro-Tem Carr provided background on the initial loan and commented on previous discussions regarding what to do with the day worker center and how to provide assistance to day workers. He stated that several people in conjunction with certain churches wanted to find a solution with St. Catherine heading up the effort. He further stated that the location seemed logical as day workers already congregated at that location. Mayor Pro-Tem Carr indicated that the city and the owners of the loan were both willing to cooperate on the property. Mayor Pro-Tem Carr noted that there were two concerns addressed at the time, to accommodate the needs of the day worker center and to develop the site. He recalled the loan was an incentive and the issues currently discussed were also discussed previously. He further noted that the development of the Granary site was a high priority at the time as it was clearly a blighted area located within the downtown. He expressed that requests were made to assist in the entire project, but the day worker center was a higher priority at the time. Mayor Pro-Tem Carr confirmed City Manager Tewes comments regarding the grant received by the City allowed the complete reconstruction of Depot Street. He summarized that the applicants should have some relief to the loan in the suggested 50% but not forgiveness of the entire amount. He affirmed his understanding of the unease in forgiving a loan, but the incentives were always sought to accomplish the improvement of the area. He further emphasized that the incentive of forgiving a portion of the loan is a positive to having that parcel developed.

Councilmember Siebert asked Mayor Pro-Tem Carr what the initial project was for the vacant parcel.

Mayor Pro-Tem Carr indicated that it was for a housing proposal.

Councilmember Siebert further asked how many units were initially planned. Business Assistance and Housing Services Director Toy clarified that the initial plan was for 20 units, but that the proposed 45 units are in line with the Downtown Specific Plan.

Councilmember Siebert expressed that in other redevelopment agencies \$100,000 subsidy per unit would not be unheard of and this proposal provides for a relatively small incentive.

Councilmember Librers thanked the Council for clarification and stated that the comments increased her comfort on this item.

Action: *On a motion by Council/Agency Member Librers and seconded by Council/Agency Member Constantine **Adopted** Resolution MHRA-339 authorizing the Executive Director to prepare/amend and execute all the necessary and appropriate legal documents, subject to Agency Council review, needed to forgive 50% of the \$205,000 loan plus accrued interest given to Charles Weston and Lesley Miles to construct the offsite improvements for the Day Worker Center Project and extend the loan terms, as recommended below, for the remaining principal and interest. The motion passed by the following vote: Ayes: 4; Noes: 0; Absent: 1 (Tate).*

City Council Action

OTHER BUSINESS:

17. LABOR STATUS UPDATE

Recommended Action(s): Discuss and consider future alternatives.

City Manager Tewes presented staff report.

Mayor Pro-Tem Carr opened the public comment period at 7:45 p.m.

No public comment received.

Mayor Pro-Tem Carr closed the public comment period at 7:46 p.m.

Councilmember Constantine requested clarification regarding the chart indicating CalPERS retirement. City Manager Tewes stated that the chart included the current actuarial study and that the chart indicating anticipated changes to the RDA took into account the CalPERS with the new actuarial study.

Councilmember Siebert confirmed that the City is not under any obligation to fill the current vacant position within the Police Department under the current MOU, but that such action would cause a reduction in service within that department. City Manager Tewes commented on an item within the POA MOU regarding when retirements occur within the department the City should not fill such positions, but rather give the 3% scheduled salary increase. City Manager Tewes clarified that the salary increase would not occur if those retirements do not take place.

Councilmember Siebert commended the bargaining units for working with the City and stated that things have gotten worse. He questioned whether other cities' bargaining units have been as positive and forthcoming in cooperating with the cities as our organizations have. City Manager Tewes stated that

other agencies were bargaining for open contracts and that the City of Morgan Hill is attempting to meet and confer with an agreement in place.

Mayor Pro-Tem Carr thanked all employees of the City for cooperation in the face of increased duties and expressed appreciation for the services provided by the employees. He stated that Council made a prudent decision to direct staff to meet and confer with the bargaining units. He also acknowledged the bargaining units and their desire to meet regarding the budget, but also urged them to meet and confer on the cost structure of the current contracts including the labor rates and retirement rates in order to continue to provide needed services to the City residents. He offered that if it is not possible to come to an arrangement through the meet and confer process, the City will abide by existing contracts, but will continue to request that the bargaining units come to the table to meet and confer. He pointed out that there might be other items within the contracts that the bargaining units would like to discuss and that the City is open to discussing those issues as well in order to provide the best working environment for all employees. He warned that the upcoming process of approving a budget will be difficult, nonetheless he encouraged the open dialog to continue and stressed the vital importance of the meet and confer process that needs to take place with all the bargaining units.

Councilmember Siebert confirmed that the City of Morgan Hill's fiscal position is not very good in relation to other Santa Clara County cities. He asked whether the City charges less for business licenses and whether there is a utility user's fee. City Manager Tewes clarified that there are no local taxes on local citizens only a local tax that is charged on people who use hotel rooms which leads to the City of Morgan Hill having the second lowest per capita revenue of any full service city in the County. He also stated that retirement costs are not among the lowest which explains the gap and the sustainability challenge, if the revenue base is low then the salary and retirement costs structure needs to be low as well.

No action taken

***Mayor Pro-Tem Carr Called for a Recess at 7:56 p.m.
Reconvened the meeting at 8:04 p.m.***

City Council and Redevelopment Agency Action

PUBLIC HEARINGS:

ITEM 18

18. CDBG & SERVICE GROUP ANNUAL FUNDING (FY11/12)

Recommended Action(s):

1. **Conduct** public hearing; and
2. **Adopt** Resolution 6409 for appropriation of FY11/12 CDBG & Local Grant Funds, including authority for staff to modify funding allocations after adoption based on the recommended contingency plan to address final Federal CDBG budget appropriation or loss of RDA funding; and
3. **Authorize** the City Manager to do everything necessary for the implementation of the CDBG Program including execution of all required contracts.

Senior Project Manager Ordonez presented report.

Councilmember Siebert asked about the source of the Senior Housing Trust Fund and the senior housing fee. Senior Project Manager Ordonez responded that the Senior Housing Trust Fund came out of a growth control project and an endowment made to the City of Morgan Hill for \$300,000.

City Manager Tewes clarified that the RDCS system might have been a preexisting development agreement whereby in exchange for certain entitlements they would make a significant contribution provided it was reserved for the senior housing trust fund. Senior Project Manager Ordonez added that the housing fee is the in-lieu fee volunteered by developers as part of the growth control.

Council Member Siebert asked about alternate uses for the Senior Housing Trust Fund. Senior Project Manager Ordonez explained that the use has to be related to a senior type of project or activity.

Councilmember Siebert questioned whether the Senior Center would be eligible for those funds. City Manager Tewes advised that the fund is generally used for senior housing programs.

Councilmember Siebert questioned the purpose of the in lieu fee. Senior Project Manager Ordonez stated it could possibly be used for housing projects to preserve below market units or down payment assistance.

Councilmember Constantine asked for clarification regarding the conclusion of the County that the healthy kids program is ineligible due to its premiums. Senior Project Manager Ordonez noted that after consulting with HUD, the premiums of the program would not be an eligible expense under CDBG.

Councilmember Constantine confirmed with Senior Project Manager Ordonez that the City would have to go by the County's recommendation as the County administers the grant funds.

Mayor Pro-Tem Carr asked Senior Project Manager Ordonez for some additional explanation regarding the youth outreach scholarship program.

Mayor Pro-Tem Carr questioned whether we are just using the interest from the senior housing trust. Senior Project Manager Ordonez indicated that the fund itself is actually being depleted.

Councilmember Siebert inquired whether there is any urgency on making any decisions tonight. Senior Project Manager Ordonez specified that there is urgency regarding the RDA decisions of about 20%. City Manager Tewes added that the County was requesting that the City declare intention prior to the end of the month for CDBG as well.

Mayor Pro-Tem Carr opened the public comment period at 8:15 p.m.

Martin Eichner from Project Sentinel spoke in favor and offered comments regarding providing services in South County serving 300 residents with housing problems.

Denise Morris, a volunteer from Live Oak adult daycare, spoke in favor. Read two letters of support.

Jenny Niklaus, from Family Living Center spoke in favor and commented on the services they provide regarding for housing assistance.

Emily Hennessey from the Healthy Kids program offered comments regarding how other cities have made the program eligible for CDBG funding, she also requested City help in finding funding to continue program.

Lynn Magruder from Community Solutions commented on dire times and thanked Council and staff for continuing generous support for domestic violence shelter.

Mayor Pro-Tem Carr closed the public comment period at 8:29 p.m.

Councilmember Constantine asked staff whether the City could consider funding per Emily Hennessey's suggestions. Senior Project Manager Ordonez replied that the city would have to defer to the County and provided comments regarding the time restriction and limits of funds for community service providers.

Councilmember Siebert commented regarding his concern about the Senior Housing Trust Fund and compelling presentations from senior housing and adult daycare, and suggested that only the decisions for the RDA 20% portion be made tonight and other items brought back at a later time.

Mayor Pro-Tem Carr asked Senior Project Manager Ordonez for clarification. Senior Project Manager Ordonez stated that it would be prudent to make decision on CDBG and RDA issues, because recommendations must be made to the County, although the Housing Trust Fund and housing fees can be put off until a future time, but waiting to make a decision might have implications for the service organizations and their budget process.

City Manager Tewes confirmed that the Senior Housing Trust fund (235) is being depleted but this action tonight is consistent with previous actions.

Councilmember Seibert requested additional clarification regarding how the Adult Daycare provides similar services as the Senior Center and how it qualifies. City Manager Tewes explained that the services provided by the Adult Day Care program is for persons at low and very low income and has housing support services as described by the trust and further clarified the differences in services.

Councilmember Constantine requested Councilmember Siebert to expand on his concerns regarding certain programs so that the issues would be addressed due to difficulties non-profits have in securing funding.

Councilmember Siebert expressed no problem with the programs at the same time he voiced concern regarding senior citizens program also suffering a lack of resources and sees it as a tug of war with other worthy programs, as well as his concern about duplication of services.

Councilmember Librers commented on her concerns regarding respite care not falling into housing and questioned if any of the remaining Senior Housing Trust Funds can be allocated to the Senior Center. City Manager Tewes stressed that the fund is for housing and housing support services and that the Senior Center would not be eligible, but that the City Attorney could review the trust agreement and give a precise answer.

Councilmember Librers questioned the eligibility of the programs and City Manager Tewes provided clarification on how programs qualify and the fund only supports low income seniors.

Senior Project Manager Ordonez further explained that the service providers provide a service to the population that they serve, but the City only provides funds for low income seniors; also Daybreak Respite provides lower income senior access to housing related services.

Councilmember Librers requested that staff look into funding to support the Senior Center, she also confirmed that we did not support the Healthy Kids program last year.

Mayor Pro-Tem Carr provided history regarding a previous suggestion that the Health Foundation provide services and reiterated his request for the Health Foundation to support the Healthy Kids program. He commented on serving as the City's representative on the Housing Committee regarding CDBG dollars allocation and clarified qualification qualities to acquire funding based on income levels.

He also stated that services provided are directly utilized by the residents of city and offered additional comments regarding the difficult time, concern over RDA funds and if service providers will suffer if the State negates contracts regarding RDA. Mayor Pro-Tem Carr stated his agreement with Councilmember Libbers regarding finding additional funding options for the Senior Center and seniors in general and commented on his hope that the Health Foundation finds some level of funding for the Healthy Kids program.

Action: *On a motion by Council/Agency Member Constantine and seconded by Council/Agency Member Siebert **Adopted** Resolution 6409 for appropriation of FY11/12 CDBG & Local Grant Funds, including authority for staff to modify funding allocations after adoption based on the recommended contingency plan to address final Federal CDBG budget appropriation or loss of RDA funding; and **Authorized** the City Manager to do everything necessary for the implementation of the CDBG Program including execution of all required contracts.. The motion passed by the following vote: Ayes: 4; Noes: 0; Absent: 1 (Tate).*

City Council Action

PUBLIC HEARINGS:

ITEMS 19-20

19. ZONING AMENDMENT: ZA-09-09/DEVELOPMENT AGREEMENT: DA-09-06: CENTRAL-UCP

Recommended Action(s)

1. **Open/close** public hearing; and
2. **Waive** the first and second reading of Zoning Amendment Ordinance; and
3. **Introduce** Zoning Amendment Ordinance; and
4. **Table** action on the Development Agreement Ordinance.

Report by Planning Manager Rowe.

Councilmember Siebert asked and Planning Manager Rowe confirmed that there is a homeowners association and they will be responsible for maintenance.

Councilmember Siebert requested clarification regarding overflow parking spaces and whether the 20 foot private lane creates a problem for public safety and fire. Planning Manager Rowe stated that police and fire did not consider it a problem.

Mayor Pro-Tem Carr confirmed that the action to be taken is on the zoning amendment and then the development agreement would be brought back at a future meeting.

Mayor Pro-Tem Carr opened the public hearing at 8:56 p.m.

Icarus Sparry commented on the public hearing notice and the votes of the Planning Commission being recorded incorrectly on that notice. Also commented on documents provided to the Planning Commission.

Michael Cady, applicant, commented on application and zone change. Answered Mr. Sparry's concerns and stated a sight plan was included in Planning Commission packet and that changes were made to the plan prior to bringing it before council. Councilmember Siebert asked if the process is accelerated will units be completed sooner and applicant responded that there are more steps needed to complete process.

Public hearing closed 9:00 p.m.

Ordinance title read by Minutes Clerk Wilson.

***Action:** Mayor Pro-Tem Carr Opened the public hearing at 8:56 p.m. and closed the public hearing at 9:00 p.m.; and On a motion by Council/Agency Member Constantine and seconded by Council/Agency Member Librers Waived the first and second reading of Zoning Amendment Ordinance; and On a motion by Council/Agency Member Constantine and seconded by Council/Agency Member Siebert Introduced Zoning Amendment Ordinance; and Tabled action on the Development Agreement Ordinance. The motion passed by the following vote: Ayes: 4; Noes: 0; Absent: 1 (Tate).*

20. DRAFT SANTA CLARA VALLEY HABITAT CONSERVATION PLAN
Recommended Action(s)

1. **Comment** on the Draft Plan and EIR/EIS; and
2. **Discuss/Identify** major issues to be addressed by Liaison Group of Elected Officials in April.

Report by Planning Manager Jim Rowe. Supplemental report dated March 16, 2011 provided to present Council with background information on the reasons for the City's participation in the Santa Clara Valley Habitat Conservation Plan and information on the benefits of the Habitat Plan to Morgan Hill.

Ken Schreiber from Habitat Plan briefed the Council on Butterfield South Extension Project and things that could happen if project applies outside the Habitat Plan as well as projects compliant to the Habitat Plan having much more expeditious approval on permits.

Councilmember Constantine inquired whether Morgan Hill is in Zone B Mr. Schreiber noted that the Butterfield project is.

Councilmember Constantine further clarified why the riparian impact mitigation fee is applied to the entire project. Mr. Schreiber explained that the assumptions of the Habitat Plan is that all land has value and species impacts if developed and to get away from the project by project review process all development will pay a fee due to the loss of the land as habitat value. Mr. Schreiber advised that the trade off for all development paying a fee would be that some projects currently in the system that would never have to pay a fee will now be required to pay a fee and some projects that may currently face a four or five year delay may move quicker through the process. He further stated that the plan will spread the fees along all development to eliminate uncertainty including for Butterfield project.

Councilmember Constantine asked if a project was 10 acres or smaller would they still pay fees and Mr. Schreiber confirmed that they would have to pay the fee and only property one half acre or less would not pay any fees.

Mr. Schreiber divulged the background regarding the initialization of the Habitat Plan and informed Council that the plan is addressing State and Federal species laws, providing mitigation and conservation as well. His report outlined the process of implementing the Habitat Plan and noted the cost of the plan at \$938 million in current dollars over 50 years. He indicated 58 % of funding will come from public and private impact fees and the rest of the funding will come from a combination of local agencies continuing to acquire open space and putting it into the system; and State and Federal grants and endowment fund interests. He disclosed that a joint powers authority has been proposed, and one of the objectives is to have elected officials making the decisions and running the program. He explained that the governing board will consist of Morgan Hill, Gilroy, San Jose and the County; the implementing board will also

consist of the same agencies plus the Santa Clara Valley Water District (SCVWD) and Valley Transportation Authority (VTA). Mr. Schreiber remarked that the implementing board would accomplish 98% of the tasks and the governing board would set fees and adopt the budget. He mentioned that a cooperative agreement is being created and there will also be an implementation agreement. He further explained the major elements for the program including Land use and the Conservation strategy that identifies priority areas. He stressed that the plan does not approve development and only addresses the endangered species aspect which does not include the geological or drainage aspects. He continued that there will be surveys required for riparian as well as serpentine areas and that stream and riparian setbacks will be established as uniform and that flood protection projects are except from any setbacks. Mr. Schreiber mentioned that there are three fee zones A, B, and C; and stated that most of Morgan Hill lands in zone B which is mostly flat land and agricultural land. He noted that the fees are based on a budget cost model based on the amount of land that you disrupt will determine the fee with additional special fees for serpentine or riparian land, and that the Burrowing Owl fee will go away. He shared an additional item with Council and the public that outlined some issues that have come up in other reviews.

Councilmember Constantine asked what happens with a habitat once the fee is paid. City Manager Tewes clarified that the \$250,000 fee for the Butterfield project is what it would cost to mitigate the impact by replacing trees three-to-one. Mr. Schreiber explained that that would be project specific mitigation which would go away with the plan.

Councilmember Constantine inquired as to what mitigation would occur once the fee is paid. Mr. Schreiber explained that land to be consumed would be considered a loss and that mitigation would not happen onsite, but that the money would be used to acquire land into the reserve system and to acquire and restore, or even create wetland areas.

Councilmember Constantine asked what questions would be addressed. Mr. Schreiber referred Council to the handout and listed some of the concerns consisting of the fees, how projects that are already in process will be handled, wetland permitting process, conservation of ranch lands, discussion of Coyote Valley, and also questions as to what would happen if the plan is not adopted. Mr. Schreiber stated that if the plan is not adopted then there would be questions regarding what would happen to the 2001 permits that would not be in compliance and the issues would not go away, but would need to be addressed at a later time.

Councilmember Librers asked for clarification concerning the economic competitiveness. Mr. Schreiber explained that San Jose is the most vocal regarding its competitiveness with other jurisdictions in the Valley and feels in direct competition for business; in addition San Jose feels that certain conditions in the plan would directly undercut the competitiveness of doing business in San Jose. He affirmed that San Jose's concerns were legitimate and that most development in San Jose would consequently not have to pay fees, or would have to pay very small fees and that they have waived the issue.

Mayor Pro-Tem Carr stated that the issue should be considered waived in Morgan Hill due to the greater economic hardship.

Councilmember Librers confirmed through Mr. Schreiber that half an acre or less would not pay fees.

City Attorney Wan clarified that Zone C has to be surrounded by urban development.

Councilmember Siebert commented regarding seeing the presentation previously and that most discussions were regarding fees. He requested clarification regarding greatest value areas located just outside Morgan Hill as they were not indicated this time. Mr. Schreiber clarified that the greatest areas of value for Morgan Hill is in the Coyote regions.

Councilmember Siebert commented that he was looking for greater value for Morgan Hill by increased funding to further expand the greenbelt area between Morgan Hill and San Jose but that it seems that the areas that will experience the greatest benefit are in the Coyote regions. He also noted that he did not feel that this is a great system, but creates opportunities and provides benefit to the City by creating a permitting process and is a better alternative that also provides a level of certainty on projects.

Councilmember Librers asked how this plan will allow permits to be processed quicker.

Councilmember Siebert explained how the plan will shorten length of permitting process and reduce time and commented on the cost being burdensome for developers with no significant impact on an area who previously would not have had to mitigate and developers who had significant impact would have an easier time.

Councilmember Librers stated that it is unfair that someone with a smaller project pays the same fees as a larger project and expressed concerns regarding the cost of doing business.

Councilmember Constantine confirmed that the questions brought up would fall under the economic competitiveness category under the list of key issues.

Mayor Pro-Tem Carr questioned the level of certainty of the plan. Mr. Schreiber stated that that once an HCP is adopted that you will no longer have to go through the Fish and Game permitting system, but that if you have special areas such as wetland then you will still need to obtain permits from the Army Core of Engineers.

Mayor Pro-Tem Carr inquired whether most properties in Morgan Hill fall within the HPC. Mr. Schreiber remarked that only properties with a riparian impact will need the Army Corp of Engineers wetland permit.

Mayor Pro-Tem Carr inquired whether the intent is to incorporate the Army Corp of Engineers as a permitting agency within the HPC and eliminate the need to obtain additional permits if there is riparian impact. Mr. Schreiber noted that that is the intent and the Army Corp of Engineers will use the plan in the permitting process and will simplify the whole process.

Mayor Pro-Tem Carr asked when outstanding policy issues such as pipeline issues would be addressed. Mr. Schreiber stated that the plan would be applied to any project that will be pulling a grading permit but it has not been established whether ongoing projects would subject to the plan.

Mayor Pro-Tem Carr clarified that only North San Jose would be subject to the Burrowing Owl mitigation. Mr. Schreiber remarked no nests had been found for Burrowing Owls during two surveys of Morgan Hill.

Councilmember Constantine confirmed through Mr. Schreiber that even if a project does not affect or impact a species they will still have to pay the fee. City Attorney Wan clarified that those who would not have to get a permit currently will still have to pay a fee in the new plan.

Mayor Pro-Tem Carr opened the Public Comment period at 10:13 p.m.

Roger Schaller opposed. He commented regarding HPC and his concern regarding fees taking effect prior to the plan being approved, also commented on it being cost prohibitive to development.

Collier Buffington comments in favor of most parts of this plan, and offered comments regarding \$7 mill spent on a plan that has not been tested through scientific method. Mr. Buffington also commented on assumptions that properties will be acquired from willing sellers within scope of plan and assumptions that there were no surveys done regarding where the species actually are.

Dick Oliver spoke in favor of the plan and provided comments regarding his experience of the current permitting process and comments regarding transferring wealth from one rancher to the next and increasing property value.

Mayor Pro-Tem Carr closed the public comment period at 10:26 p.m.

Councilmember Constantine expressed his concern regarding unanswered questions and his concern regarding economic development.

Councilmember Librers commented on fees being excessive and that this plan will be devastating to the community regarding economic development, and cannot support it in the form it is in now.

Councilmember Siebert requested that all questions brought up be answered.

Mayor Pro-Tem Carr confirmed that the issues are being looked at and expressed his concern regarding the Nitrogen Deposition fee, how it is calculated, the disparity between Morgan Hill and Gilroy and the need for it in general. He mentioned the speakers' comments on the value of the plan but is concerned regarding the inequality of the fees and that the plan doesn't cover all permitting agencies.

City Manager Tewes urged the Council to request an economic impact analysis rather than a narrative discussion of competitiveness.

City Attorney Wan clarified the process going forward and asked Mr. Schreiber whether the plan would be brought back to the Council to certify the EIR/EIS. Mr. Schreiber explained that there would be one more review before the final EIR/EIS.

Mayor Pro-Tem Carr officially requested that an economic analysis be done.

Councilmember Siebert questioned whether the public should put their questions into writing and where would they share those comments. Mr. Schreiber shared that public input is encouraged and people can comment on the plan on the website, www.scv-habitatplan.org.

No action taken.

FUTURE COUNCIL AGENCY-INITIATED AGENDA ITEMS:

Mayor Pro-Tem Carr requested a report from Health foundation.

City Council Action

CLOSED SESSION:

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURNED TO CLOSED SESSION AT 10:42P.M.

CONFERENCE WITH LABOR NEGOTIATOR:

Authority:	Pursuant to Government Code Section 54957.6
City Negotiators:	City Manager, City Attorney
Employee Organization:	Morgan Hill Police Officers Association
	Employees Covered under Management Resolution #6381
	AFSCME Local 101
	Morgan Hill Community Service Officers Association

RECONVENE


CLOSED SESSION ANNOUNCEMENT

No Reportable Action

ADJOURNMENT

There being no further business, Mayor/Chair Tate adjourned the meeting at 11:05 p.m.

MINUTES PREPARED BY:



JULIE DRIMAKIS, DEPUTY CITY CLERK